

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

DENNIS RAY BERNARD,  
Plaintiff,

v.

VICTOR EJIMADU, *et al.*,  
Defendants.

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CIVIL ACTION NO. H-04-2647

**MEMORANDUM OPINION AND ORDER**

Plaintiff Dennis Ray Bernard, a state inmate proceeding *pro se* and *in forma pauperis*, filed this civil rights action under 42 U.S.C. § 1983 complaining of the terms of his parole. On June 9, 2005, the Court ordered service of process on defendant Victor Ejimadu. (Docket Entry No. 12.) In the order, the Court ordered defendant to file a dispositive motion, and ordered plaintiff to respond to the dispositive motion within thirty days of the date reflected on the certificate of service. Plaintiff was warned that his failure to timely respond to the motion may result in dismissal of the lawsuit for want of prosecution under Rule 41(b) of the Federal Rules of Civil Procedure. (*Id.*, p. 2.)

On July 10, 2006, defendant filed a motion for summary judgment, alleging plaintiff failed to exhaust his state remedies. (Docket Entry No. 31.) The certificate of service reflects that plaintiff was served with a copy of the motion on July 10, 2006. (*Id.*, p. 6.) To-date, and despite expiration of a reasonable period of time, plaintiff has neither responded to the motion for summary judgment nor requested additional time to respond.

The Court finds that plaintiff has failed to comply with the Court's order to respond. The Court further finds that plaintiff's failure to respond to the motion for summary judgment reflects his lack of due diligence in prosecuting his case. *See Martinez v. Johnson*, 104 F.3d 769 (5th Cir. 1997) (affirming dismissal for want of prosecution based on inmate's failure to respond to a summary judgment motion as ordered by the district court).

Accordingly, this case is **DISMISSED WITHOUT PREJUDICE** for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Any and all pending motions are **DENIED AS MOOT**.

The Clerk will provide a copy of this order to the parties.

Signed at Houston, Texas, on this the 21<sup>st</sup> day of August, 2006.

  
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KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE